

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

BAYSCAN TECHNOLOGIES, LLC  
12782 Prospect Ave., 1st Floor  
Strongsville, Ohio 44149

Plaintiff

vs.

ENVISIONWARE, INC.  
2810 Premiere Parkway NW  
Suite 350  
Duluth, Georgia 30097

Defendant.

CIVIL ACTION FILE

CASE NO. 01:08-CV-2169

**DEFENDANT ENVISIONWARE, INC.'S  
NOTICE OF REMOVAL**

TO THE CLERK OF COURT FOR THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OHIO:

Pursuant to 28 U.S.C. §§ 1332, 1441(a) and 1446, Defendant EnvisionWare, Inc. ("EnvisionWare") through its undersigned counsel, Roetzel & Andress LPA and Powell Goldstein LLP, hereby removes Civil Action No. CV 08667637 from the Court of Common Pleas, Cuyahoga County, Ohio to the United States District Court for the Northern District of Ohio, Eastern Division. In support of this Notice of Removal, EnvisionWare states as follows:

1. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 (diversity jurisdiction) because it is an action between citizens of different states with an amount in controversy in excess of \$75,000.00, exclusive of interest and costs.

2. On or about August 12, 2008, Plaintiff BayScan Technologies, LLC (“Plaintiff” or “BayScan”) filed a Complaint against Defendant EnvisionWare in the Court of Common Pleas, Cuyahoga County, Ohio.

3. The Summons and Complaint were served by certified mail sent to EnvisionWare’s office in Duluth, Georgia on or about August 13, 2008 and received on August 18, 2008. (See Declaration of Michael J. Monk, dated September 9, 2008, attached hereto as Exhibit B, at ¶ 4). Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all pleadings served upon EnvisionWare in the state court action are attached hereto as Exhibit A.

4. EnvisionWare has not taken any action in the Court of Common Pleas, Cuyahoga County, Ohio that would prejudice its rights to removal.

5. EnvisionWare is a Georgia corporation, with its principal place of business located in Duluth, Gwinnett County, Georgia. (Monk Decl. at ¶ 3).

6. At the time of the commencement of this action, and at the time of service of the Complaint, Plaintiff was, and is, a limited liability company organized under the laws of the State of Ohio with its principal place of business located in Strongsville, Cuyahoga County, Ohio. (Complaint ¶ 1).

7. There is complete diversity of citizenship among the parties to this action.

8. The Complaint, on its face, satisfies the jurisdictional amount in controversy requirement of \$75,000.00. (Complaint ¶¶ 13-16 and page 3).

9. Specifically, Plaintiff alleges that “EnvisionWare owes Plaintiff for commissions due in the amount of \$561,723.53.” (Complaint ¶ 13); “lost profit ... in the amount of

\$12,085.93.” (Complaint ¶ 14); “expenses . . . in the amount of \$10,777.98.” (Complaint ¶ 15); and that it “is entitled to commission on future profits . . . [in] amounts equal [to] \$127,303.88.” (Complaint ¶ 16).

10. In its prayer for relief, Plaintiff states that it is seeking “damages in an amount in excess of \$700,000.00.” (Complaint page 3).

11. In the aggregate, it is facially apparent from the Complaint that the amount in controversy exceeds the jurisdictional requirement.

12. This Court has original jurisdiction over the causes of action alleged in the Complaint under 28 U.S.C. § 1332. By virtue of the provisions of 28 U.S.C. § 1441(a), this entire matter is one which may be removed to this Court.

13. Venue is proper because this Court is the federal court for the district and division embracing Cuyahoga County, Ohio.

14. Removal is timely. EnvisionWare was served with a copy of the Summons and Complaint on August 18, 2008. This Notice of Removal is being filed within thirty (30) days of the date on which service was received.

15. Written notice of filing of this Notice of Removal will be served upon Plaintiff. As required by 28 U.S.C. § 1446(b), a copy of this Notice will also be filed with the Clerk of the Court of Common Pleas, Cuyahoga County, Ohio, the Court in which the state court action was originally filed. A copy of the Notice of Filing of Notice of Removal being filed in the state court is attached hereto (without exhibits) as Exhibit C.

16. In filing this Notice of Removal, EnvisionWare does not waive any defense or defenses that may be available to it. Further, EnvisionWare does not admit, acknowledge or otherwise concede that Plaintiff is entitled to recover any damages from EnvisionWare or that EnvisionWare is liable to Plaintiff in any manner.

WHEREFORE, notice is hereby given that this action is removed from the Court of Common Pleas for Cuyahoga County to the United States District Court for the Northern District of Ohio. The Civil Cover Sheet for this case is attached hereto.

September 10, 2008.

Respectfully Submitted,

/s/ Diana M. Thimmig

Diana M. Thimmig, Esq. (0016011)

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Attorneys for Defendant EnvisionWare, Inc.

**OF COUNSEL:**

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dwhitaker@pogolaw.com

**CERTIFICATE OF SERVICE**

The foregoing document is being filed electronically with the Court. A true and correct copy of the foregoing is also being sent to the following counsel of record, via First Class U.S.

Mail, postage pre-paid this 10<sup>th</sup> day of September, 2008:

John F. Burke III, Esq.  
Mansour, Gavin, Gerlack & Manos Co., LPA  
55 Public Square, Suite 2150  
Cleveland, Ohio 44113-0000

/s/ Diana M. Thimmig  
Diana M. Thimmig (0016011)  
One of the Attorneys for Defendant  
EnvisionWare, Inc.

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## **EXHIBIT A**

CASE NO.  
CV08667637

D1 CM

SUMMONS NO.  
12433748

Rule 4 (B) Ohio

Rules of Civil  
Procedure

BAYSCAN TECHNOLOGIES, LLC  
VS  
ENVISIONWARE, INC.

PLAINTIFF

DEFENDANT

## SUMMONS

ENVISIONWARE INC  
2810 PREMIERE PARKWAY NW STE 350  
DULUTH GA 30097-0000

You have been named defendant in a complaint (copy attached hereto) filed in Cuyahoga County Court of Common Pleas, Cuyahoga County Justice Center, Cleveland, Ohio 44113, by the plaintiff named herein.

You are hereby summoned and required to answer the complaint within 28 days after service of this summons upon you, exclusive of the day of service.

Said answer is required to be served on:



Plaintiff's Attorney

JOHN F BURKE III  
55 PUBLIC SQUARE  
  
SUITE 2150  
CLEVELAND, OH 44113-0000

Said answer is required to be served on Plaintiff's Attorney (Address denoted by arrow at left.)

Your answer must also be filed with the court within 3 days after service of said answer on plaintiff's attorney.

If you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

Case has been assigned to Judge:

TIMOTHY MCCORMICK  
Do not contact judge. Judge's name is given for attorney's reference only.

GERALD E. FUERST  
Clerk of the Court of Common Pleas



DATE  
Aug 13, 2008

By

Deputy

COMPLAINT FILED 08/12/2008





IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

BAYSCAN TECHNOLOGIES, LLC  
12782 Prospect Ave., 1st Floor  
Strongsville, OH 44149

Plaintiff

v.

ENVISIONWARE, INC.  
2810 Premiere Parkway NW  
Suite 350  
Duluth, GA 30097

Defendant.

CASE NO.

JUDGE

COMPLAINT

(Jury Demand Endorsed Hereon)

Now comes Plaintiff BayScan Technologies, LLC, by and through its undersigned counsel, and for its Complaint against Defendant EnvisionWare states as follows:

1. BayScan Technologies, LLC ("BayScan") is an Ohio LLC with offices located at 12782 Prospect Avenue in Strongsville, Ohio, located in Cuyahoga County.
2. EnvisionWare, Inc. ("EnvisionWare") is a company of unknown citizenship who does business throughout the nation and including Cuyahoga County.
3. In October 2006, Plaintiff met with representatives of Defendant wherein Defendant sought a business relationship with the Plaintiff. Plaintiff was asked by Defendant to perform in a sales representative capacity.
4. In November 2006, Plaintiff sent a non-disclosure commitment to EnvisionWare via email.
5. On or about November 16, 2006, Plaintiff secured an order to EnvisionWare for 20,000 RFID tags.

6. In November and December 2006, Plaintiff continued to receive information on products and pricing from EnvisionWare.

7. Throughout 2006 and 2007, Plaintiff was asked to promote EnvisionWare through emails, trips and tradeshow.

8. Defendant agreed to pay commissions to Plaintiff.

9. Plaintiff then acted as sales agent for EnvisionWare. Plaintiff incurred substantial expenses in promoting and obtaining sales for EnvisionWare.

10. The parties initially negotiated a 10% sale price commission on all software and an 8% sale price commission on any hardware. This rate was entered into by Al Coalla on behalf of EnvisionWare.

11. During the course of their relationship, EnvisionWare paid BayScan commissions at the afore-stated rate.

12. The commission rates were again reiterated by Al Coalla in an email dated September 24, 2007; however, in an email dated October 16, 2007, Coalla unilaterally changed the commission structure to 9% on software, 6% on hardware, 2% on tags and 5% on maintenance sold. Plaintiff agreed to the new commission structure.

13. EnvisionWare owes Plaintiff for commissions due in the amount of \$561,723.53.

14. Plaintiff lost profit from the Kendallville job in the amount of \$12,085.93.

15. Plaintiff was forced to incur expenses on behalf of EnvisionWare which were not reimbursed in the amount of \$10,777.98.

16. BayScan is entitled to commission on future profits for which BayScan has exerted effort. Those amounts equal \$127,303.88.

17. Plaintiff entered into a contractual relationship with the Defendant, both in writing and verbally. Defendant has failed to pay such commissions pursuant to the contractual relationship and are thus in breach of contract and Plaintiff has been damaged as a result thereof.

18. In the alternative, Plaintiff expended substantial funds on behalf of Defendant and Defendant has been unjustly enriched to the detriment of Plaintiff.

WHEREFORE, Plaintiff seeks damages in an amount in excess of \$700,000.00.

**JURY DEMAND**

A jury is hereby requested for the trial of this action.

Respectfully submitted,



JOHN F. BURKE, III (0059974)  
Mansour, Gavin, Gerlack & Manos Co., L.P.A.  
55 Public Square, Suite 2150  
Cleveland, OH 44113  
Phone 216-523-1500, Fax 216-523-1705  
*Attorney for Plaintiff*

## **EXHIBIT B**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION, CLEVELAND OFFICE**

BAYSCAN TECHNOLOGIES, LLC  
12782 Prospect Ave., 1st Floor  
Strongsville, Ohio 44149

Plaintiff

vs.

ENVISIONWARE, INC.  
2810 Premiere Parkway NW  
Suite 350  
Duluth, Georgia 30097

Defendant.

CIVIL ACTION FILE

NO. \_\_\_\_\_

**DECLARATION OF MICHAEL J. MONK**

Pursuant to 28 U.S.C. § 1746, I declare the following:

1.

My name is Michael J. Monk. I am over twenty-one (21) years of age and am competent to make this Declaration. This Declaration is given in support of the

Notice of Removal by Defendant EnvisionWare, Inc. ("EnvisionWare") in the above-styled action. The facts set forth in this Declaration are based upon my personal knowledge.

2.

I am the Vice President and Secretary for EnvisionWare.

3.


EnvisionWare is a Georgia corporation, with its principal place of business located at 2810 Premier Parkway, Suite 350, Duluth, Gwinnett County, Georgia.

4.

On August 18, 2008, EnvisionWare received by certified mail a copy of the Summons and Complaint for case number CV08667637 in the Court of Common Pleas, Cuyahoga County, Ohio.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 9, 2008

  
Michael J. Monk  
Vice President and Secretary,  
EnvisionWare, Inc.